

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of AUSTIN, Minors.

UNPUBLISHED
January 16, 2014

Nos. 316608 & 316610
Gratiot Circuit Court
Family Division
LC No. 10-007590-NA

Before: WHITBECK, P.J., and FITZGERALD and O'CONNELL, JJ.

PER CURIAM.

Respondent-mother, L. Austin, and respondent-father, M. Austin, each appeal as of right the trial court's order terminating their parental rights to their three minor children (the younger children). The trial court found that the Austins failed to acknowledge their severe abuse or rectify their deficient parenting abilities. Because the trial court did not clearly err when it found that (1) the Austins were unlikely to provide the younger children with proper care and custody within a reasonable time, (2) the younger children were likely to be harmed if returned to the Austins' home, and (3) terminating the Austins' parental rights was in the younger children's best interests, we affirm.

I. FACTS

A. BACKGROUND FACTS

The Austins had nine children, including three adult children, three children that they adopted as a sibling group (the older children), and the three younger children that they individually adopted as infants. Only the younger children are at issue in this appeal.

In September 2010, the Department of Human Services (the Department) removed the Austins' six minor children from their care on the basis that the Austins severely emotionally and physically abused and neglected the older children. This abuse was discovered when police were called after the older children ran away from the Austins' home.

The older children described the abuse to police. The children told the police that L. Austin only allowed them to bathe and change clothing once a week, only allowed them to use the restroom three times a day, and only allowed them to have small drinks of water twice a day. Two children told the police that L. Austin did not allow them to leave their bedrooms and brought them their meals in their rooms because they were "not part of the family." The children told police that L. Austin occasionally locked them into their bedrooms. The children stated that

one child only had blankets in his room. The child stated that L. Austin sometimes took even his blankets away for up to three weeks.

The older children also described severe spankings during which the Austins would have the older children hold the younger children down. One older child told police that L. Austin would spank them until she felt better; another older child stated that L. Austin would sit on the children's legs and slap them until they stopped crying.

The Department removed all the children from the Austins' home.

B. EFFECTS OF THE ABUSE

Dr. Lynn Simons and Dr. Russell Anderson both testified that the older children were underweight and malnourished. Dr. Anderson testified that the older children's weights improved dramatically once the Department removed them from the Austins' care.

Tracy Crawford, the children's counselor, testified that all six children were traumatized and had developmental delays. Dr. Simons testified that the younger children had witnessed the abuse of the older children and were significantly socially, emotionally, and educationally impaired. Because all six children presented the same deficits, Dr. Simons believed that all the children were mistreated.

C. ADJUDICATION

The Department's petition alleged that the Austins (1) required the older children to be confined to their rooms for long and unreasonable periods of time, (2) rarely permitted the older children to eat with the family, (3) inappropriately disciplined the children by holding them down and spanking them or depriving them of appropriate bedding, (4) failed to continue one older child's counseling after she was hospitalized for being suicidal, (5) did not permit the children to attend school and did not provide them with appropriate education, (6) were aware that multiple Child Protective Services referrals had been made on the family in Montcalm County and considered this as a factor when moving to Gratiot County, and (7) did not take the older children on family vacations.

The Austins admitted that they did not provide one child with appropriate follow-up psychiatric care and that they did not take the older children on family vacations, and pleaded no-contest to the remainder of the allegations. At the termination trial, the Austins claimed that they were not aware that the trial court would treat their "no contest" pleas as admissions. As a result of their pleas, the Austins relinquished their parental rights to the older children, and the trial court placed the younger children in their care under the Department's supervision.

D. THE YOUNGER CHILDREN'S SECOND REMOVAL

Crawford testified that while the younger children were in foster care from October 2010 to March 2011, they made progress in therapy. However, after the trial court returned the younger children to the Austins' care in March 2011, "all three minors have displayed significant regression." Crawford testified that she attributed the younger children's regression to "the

emotional atmosphere in the home . . .” Crawford stated that “extreme concern presently exists regarding the mental and emotional health of the minors.”

Bridget Vermeesch, the Austins’ Advanced Impact therapist, testified that she visited the Austins’ home between April 4, 2011, and May 27, 2011, and the Austins were making progress. Ronda Sorensen, the Austins’ parenting class teacher, testified that she had observed the Austins and the younger children during parenting classes and that the Austins acted appropriately with the children.

The trial court ordered the younger children removed from the Austins’ home. At the termination hearing, Crawford testified that “[t]here was virtually an immediate change” in the younger children’s behavior after they were removed.

E. PSYCHOLOGICAL EVALUATIONS

Dr. James P. Doherty performed a psychological evaluation of M. Austin. Dr. Doherty reported that when he asked M. Austin about the allegations, M. Austin either equivocated or denied them. Dr. Doherty opined that M. Austin “does not show sufficient concern about serious matters that should get his attention” and “[a]t worst . . . is capable of remaining oblivious to central child care and child protection concerns that directly or indirectly put the minor children at risk of harm.”

Dr. Andrew M. Barclay opined that L. Austin’s beliefs and values were rigid and that “[h]er thinking is narrow and very resistant to change.” Dr. Barclay opined that L. Austin was prone to focus on her own needs and interests over the needs and interests of others. L. Austin was also likely to become overwhelmed when trying to be aware of many aspects in an environment at the same time.

F. PARENTAL PROGRESS

Emily Harris, the children’s foster care case worker, reported that L. Austin did not accept responsibility for the older children’s abuse and that M. Austin would not acknowledge his part in the abuse. L. Austin’s Women Overcoming Violent Experiences facilitator reported that she “repeatedly justified psychological/emotional abuse as attempting to control out-of-control children.” Ronald Fanslow, M. Austin’s counselor, reported that M. Austin admitted to spanking the older children with a belt and “going along” with L. Austin. However, Robin Duthrie, who took over M. Austin’s therapy, initially reported that M. Austin was not really taking responsibility for his part in the children’s abuse.

Harris reported that she was concerned that the Austins were not applying the techniques taught in parenting classes. Jennifer Leppien, the younger children’s Court Appointed Special Advocate, reported that the Austins used appropriate parenting techniques inconsistently. Anna Walton, L. Austin’s counselor, reported that she observed a visit on June 6, 2011, during which the younger children exhibited “great hostility” and the Austins appeared uncomfortable, frustrated, and did not implement discipline. Dr. Barclay reported that he observed a parenting visit on October 27, 2011, and during the visit, the younger children’s behavior degenerated and the Austins did not control it.

In May 2012, Leppien reported that she “ha[d] not observed any significant changes in parenting, safety, or family bonding” Leppien reported 26 specific instances of inappropriate behavior during the three-month reporting period, including: the younger children throwing toys at the Austins’ faces or physically striking them, the Austins not comforting or acknowledging a child when he hid and cried for over 30 minutes, the younger children smearing food and water around the observation room without the Austins noticing or correcting them, and the younger children leaving the visitation room without the Austins’ knowledge.

On May 26, 2012, Dr. Simons submitted another psychological evaluation. Dr. Simons reported that, on the basis of notes that she reviewed from 75 parenting visits, the younger children were disinterested in visitation, aggressive, and destructive. M. Austin responded passively to their behavior. L. Austin was verbally and emotionally abusive to the Department’s staff in front of the younger children. Dr. Simons also reported that M. Austin stated that he learned techniques in parenting classes, but when asked how he applied them, he said “it did not apply to [the younger children] and he did not have issues with them.”

Dr. Simons reported that she also observed a recent parenting session and that there were “ongoing difficulties with parenting.” The younger children were physically violent toward each other and their parents. The Austins had “little ability to recognize the escalating emotional intensity of the children and to see that the situation was worsening.” For instance, they did not react when a child proclaimed that he hoped that an accident would kill him, and did not notice when the younger children left the visitation room during the visit.

On July 13, 2012, the trial court suspended the Austins’ parenting time on the basis of Crawford’s opinion that the visits were continuing the younger children’s emotional abuse and were having a detrimental effect on them.

G. TERMINATION HEARING

On August 3, 2012, the prosecutor petitioned to terminate the Austins’ parental rights to the younger children under MCL 712A.19b(3)(g) and (j). At the termination hearing, Dr. Simons testified that it was important that perpetrators of child abuse or neglect have the ability to acknowledge and understand their previous actions “to be able to move forward.” Walton testified that acknowledging abuse was crucial to therapy.

M. Austin admitted that the older children spent far too much time in their rooms and should have gone to school. He admitted that he spanked one of the older children. However, he denied the remainder of the allegations in the petition.

M. Austin testified that he benefitted from services and the younger children would not be in danger in his care. Duthrie testified that M. Austin appeared to take responsibility for his actions and expressed remorse, but when confronted with M. Austin’s testimony at trial, Duthrie admitted that he was “[n]ot fully” taking responsibility for the abuse.

L. Austin testified that the Austins participated in and benefitted from every service. When confronted with the allegations in the petition on cross-examination, L. Austin denied them. L. Austin testified that the Austins made mistakes and that the way that she parented the

older children was “seriously lacking,” but stated that she would not make the same mistakes again.

Shelly Bailey, a licensed social worker, testified that L. Austin never acknowledged mistreating any of the children and did not realize the lasting effects the treatment would have on them. Walton testified that L. Austin made some progress in therapy and is highly intelligent, but she did not acknowledge the effect that her abuse had on the younger children.

Dr. Simons testified that, despite a “significant amount of services,” the Austins did not take ownership of their actions and minimized them. Walton testified that she could not say that L. Austin would not be a risk to her children.

Crawford testified that the younger children have “blossomed” in foster care and made progress in therapy. The younger children testified at the termination hearing that they loved and missed the Austins. When asked whether they wanted to return to the Austins’ home, only one child responded affirmatively.

H. THE TRIAL COURT’S FINDINGS

The trial court found that the older children’s account of their abuse was credible. It found that the younger children were exposed to the neglect and abuse of the older children, and were emotionally abused by that exposure.

The trial court found that M. Austin did the best that he could, but was overwhelmed and busy providing for the family financially. The trial court found that M. Austin did not address his issues assertively.

The trial court found that L. Austin suffered from paranoid personality disorder and, as a result, transferred fault to others. The trial court noted that it was not deciding the case on psychology alone, but also considered the significant corroborating evidence of abuse. The trial court found that L. Austin was unable to admit that she abused the older children and thus a “central and enduring” problem remained. The trial court found that the Austins were able to intellectually learn parenting techniques, but were unable to “get[] close to the heart of the problem and that is the interaction between parents and children . . .” The trial court found that when the younger children entered adolescence, it was likely that L. Austin would abuse them in the same fashion as the older children.

On these bases, the trial court found that the Austins did not provide the younger children with proper care and custody and that there was no reasonable expectation that they would be able to provide that custody within a reasonable time. The trial court also found that, while the Austins may not intend to harm the younger children, it was reasonably likely that the younger children would be harmed if returned to the Austins’ home. The trial court found that termination of the Austins’ parental rights was in the younger children’s best interests because they were doing very well in foster care and that only one child was eager to return home.

II. STATUTORY GROUNDS

A. STANDARD OF REVIEW

This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination.¹ The trial court's factual findings are clearly erroneous if the evidence supports them, but we are definitely and firmly convinced that it made a mistake.²

B. MCL 712A.19b(3)(g)

The Austins contend that the trial court erred by finding that the Department proved this statutory ground by clear and convincing evidence because they participated in and benefitted from services. We disagree.

MCL 712A.19b(3)(g) provides that the trial court may terminate a parent's rights if

[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

A parent's failure to participate in *and benefit from* a service plan is evidence that the parent will not be able to provide a child with proper care.³ "[I]t is not enough to merely go through the motions; a parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent's custody."⁴

Here, the Austins' service plan was heavily focused on acknowledgement and prevention. The trial court recognized that the Austins participated in services. However, it found that the Austins were not likely to be able to provide the younger children with proper care and custody because they failed to acknowledge their former abuse and were thus unlikely to prevent future abuse. Dr. Simons testified that the older children credibly described severe emotional and physical abuse and neglect. Dr. Anderson found that the older children were malnourished and emotionally traumatized, and their weights "dramatically" improved once they were removed from the Austins' care. Dr. Simons and Dr. Doherty diagnosed all three older children with post-traumatic stress disorder.

¹ MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

² *In re Mason*, 486 Mich at 152.

³ *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005), superseded in part on other grounds by statute as stated in *In re Hansen*, 285 Mich App 158, 163; 774 NW2d 698 (2009), vacated on other grounds, 486 Mich 1037 (2010). See *In re Olive/Metts Minors*, 297 Mich App 35, 41; 823 NW2d 144 (2012).

⁴ *In re Gazella*, 264 Mich App at 676.

Both Dr. Simons and Walton testified that it is important that the perpetrator of child abuse be able to acknowledge the abuse in order to make progress. However, at the termination hearing, the Austins failed to acknowledge the severity of the abuse and minimized their actions. M. Austin admitted only that he spanked the children, failed to educate them, and “allowed” them to spend too much time in their rooms. He continued to claim that he did not know that L. Austin put the children on a bathroom schedule.

L. Austin admitted only that she was not as caring as she should have been, should not have isolated the older children by sending them to their rooms, and that she should not have spanked them. Bailey testified that L. Austin never acknowledged mistreating any of the children. Duthrie testified that M. Austin was not fully taking responsibility for the abuse.

Thus, ample evidence supported the trial court’s findings that the parents were unable to admit the abuse, deflected responsibility, and would be unable to address their parenting issues in the future. We conclude that the trial court’s finding was not clearly erroneous.

C. MCL 712A.19b(3)(j)

The Austins contend that the Department did not prove that they were reasonably likely to harm the younger children if the trial court returned them because they were not likely to treat the younger children like they treated the older children. We disagree.

MCL 712A.19b(3)(j) provides that the trial court may terminate parental rights if

[t]here is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.

“Evidence of how a parent treats one child is evidence of how he or she may treat the other children.”⁵ The trial court may consider potential psychological harm caused by the parent’s conduct.⁶

The Austins assert that they made progress, but witnesses documented and testified that the Austins’ were unable to implement the parenting techniques they purportedly learned from their services. Dr. Simons testified that the Austins were unable to demonstrate that they were capable of managing the younger children. Leppien reported that the younger children would behave extremely inappropriately without parental acknowledgement or correction. This behavior continued through May 2012, over a year after the Austins began participating in services. Given that L. Austin testified that they incorrectly disciplined the older children because she was overwhelmed by and unable to handle their behavior, the Austins’ inability to handle the younger children’s behavior was *extremely* pertinent. We conclude that the trial

⁵ *In re Hudson*, 294 Mich App 261, 266; 817 NW2d 115 (2011).

⁶ *Id.* at 268.

court's finding that the younger children would be at risk of harm because L. Austin would likely abuse them in the same manner as she abused the older children was not clearly erroneous.

III. FAMILY THERAPY

The Austins assert that the trial court failed to order family therapy. Parties abandon issues on appeal if they “merely announce their position and leave it to this Court to discover and rationalize a basis for their claims.”⁷ The Austins do not provide any legal authority to support their assertion. The Austins also fail to explain how the trial court's failure affected the outcome of their case. Given the Austins' failure to assert *any* legal authority to support this issue, we conclude that they have abandoned it.

III. THE CHILDREN'S BEST INTERESTS

A. STANDARD OF REVIEW

The trial court must order a parent's rights terminated if the Department has established a statutory ground for termination by clear and convincing evidence and it finds from a preponderance of evidence on the whole record that termination is in a child's best interests.⁸ We review for clear error the trial court's determination regarding a child's best interests.⁹

B. LEGAL STANDARDS

The trial court should weigh *all* the evidence available to determine a child's best interests.¹⁰ The trial court may consider the advantages of a foster home placement.¹¹ The trial court may also consider a child's bond to the parent, the parent's parenting ability, and the advantages of a foster home over the parents' home.¹²

C. APPLYING THE STANDARDS

The Austins contend that the trial court's finding that termination was in the younger children's best interests was clearly erroneous because all three children loved and missed the Austins and one child wanted to return home.

⁷ *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 633; 752 NW2d 479 (2008); *People v Matuszak*, 263 Mich App 42, 59; 687 NW2d 342 (2004).

⁸ MCL 712A.19b(5); *In re Olive/Metts Minors*, 297 Mich App at 40; *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013).

⁹ MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

¹⁰ *In re Trejo Minors*, 462 Mich at 353.

¹¹ *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009).

¹² *In re Olive/Metts Minors*, 297 Mich App at 41-42.

To the extent that the Austins assert that the younger children's bond to the parents should override the other best interests considerations, we disagree. The trial court should weigh *all* the evidence available to determine a child's best interests.¹³ The trial court should consider a wide variety of factors when making this determination.¹⁴

We also conclude that the trial court did not clearly err when it determined that terminating the Austins' parental rights was in the younger children's best interests. Here, the children went into foster care with serious emotional, social, and educational developmental delays. Crawford testified that the younger children were seriously traumatized when they entered foster care. Crawford testified that, by the time of the termination hearing, the younger children were doing very well. Additionally, for the reasons stated above, the Austins had deficient parenting abilities. Finally, the trial court did consider the younger children's bond to the Austins, noting that only one of the younger children wanted to be returned to the Austins' care. Considering the whole record, we are not convinced that the trial court's determination was a mistake.

IV. CONCLUSION

We conclude that the trial court did not clearly err when it determined that MCL 712A.19b(3)(g) and (j) supported terminating the Austins' parental rights to the younger children because the Austins failed to benefit from their service plan. The Austins failed to acknowledge their severe abuse and neglect and failed to rectify their deficient parenting abilities. We also conclude that the trial court did not clearly err when it determined that terminating the Austins' parental rights was in the younger children's best interests.

We affirm.

/s/ William C. Whitbeck
/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell

¹³ *In re Trejo Minors*, 462 Mich at 353.

¹⁴ *In re Olive/Metts Minors*, 297 Mich App at 41-42.